

INITIAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 49-005(a)(1)

Specific Purpose:

This section is being amended to add the term “New Affidavit of Support” and to equate it to other listed term of “Affidavit (New Version).”

Factual Basis:

This amendment is necessary because the term “New Affidavit of Support” is used frequently throughout these regulations.

Section 49-005(a)(2)

Specific Purpose:

This section is being amended to add the term “Old Affidavit of Support,” state who signs the form, and to equate it to other listed term of “Affidavit (Old Version).”

Factual Basis:

This amendment is necessary because the term “Old Affidavit of Support” is used frequently throughout these regulations.

Sections 49-005(b)(1) through (b)(1)(B)2.

Specific Purpose:

These sections are being adopted to provide a definition for “basic California Assistance Program for Immigrants (CAPI)” as reflecting the original eligibility component of CAPI, which was effective December 1, 1998, and to list the criteria for basic CAPI eligibility.

Factual Basis:

This adoption is necessary for ease of reference to define a term used to differentiate between the “basic CAPI” eligibility component under Welfare and Institutions Code Sections 18938(a)(1) and (2), and the term “extended CAPI” for eligibility under Welfare and Institutions Code Section 18938(a)(3). It is also necessary to make clear who is eligible for basic CAPI.

Section 49-005(d)(1)

Specific Purpose:

This section is being adopted to define the “Department” as meaning the California Department of Social Services.

Factual Basis:

This section is necessary to specify that the California Department of Social Services is the Department responsible for supervising administration of CAPI, as specified in Welfare and Institutions Code Section 18937.

Sections 49-005(e)(4) through (e)(4)(C)3.

Specific Purpose:

These sections are being adopted to provide a definition for “extended CAPI” as reflecting the amended eligibility component of CAPI, which was effective October 1, 1999, and to list the criteria for extended CAPI eligibility.

Factual Basis:

This section is necessary for ease of reference to define a term used to differentiate between the “extended CAPI” eligibility component under Welfare and Institutions Code Section 18938(a)(3), and the term “basic CAPI” for eligibility under Welfare and Institutions Code Sections 18938(a)(1) and (2). It is also necessary to make clear who is eligible for extended CAPI.

Section 49-020.2

Specific Purpose:

This section is being amended to specify that all immigrants who entered the United States prior to August 22, 1996 (who meet all other eligibility requirements) are eligible for basic CAPI, but not extended CAPI. Other eligibility criteria are substantially different for people who meet just the requirements in Welfare and Institutions Code Section 18938(a)(3). For ease of reference, non-citizens who meet the original CAPI criteria established in Welfare and Institutions Code Sections 18938(a)(1) and (2) are referred to as being eligible for basic

CAPI. This section, as amended, refers only to those persons who meet the requirements of Welfare and Institutions Code Section 18938(a)(1).

Factual Basis:

This amendment is necessary to comply with the provisions of Welfare and Institutions Code Section 18938. Welfare and Institutions Code Section 18938(a)(3) was first added by amendment in 1999. It established new criteria for immigrants who entered the United States on or after August 22, 1996. Non-citizens who only meet the relatively new eligibility criteria reflected in Welfare and Institutions Code Section 18938(a)(3) are referred to as being eligible for extended CAPI.

Section 49-020.3

Specific Purpose:

This section is being amended to specify that there are two different sets of immigration status standards for persons legally entering the United States on or after August 22, 1996. It introduces the terms ‘basic’ and ‘extended’ CAPI to differentiate the two eligibility components.

Factual Basis:

This amendment is necessary to comply with Welfare and Institutions Code Sections 18938(a)(2) and (3), which establish two different sets of eligibility rules regarding sponsor restrictions for persons entering the United States on or after August 22, 1996.

Section 49-020.31

Specific Purpose:

This section is being amended to clarify that the eligibility rules regarding sponsor restrictions outlined in this section only apply to basic CAPI.

Factual Basis:

This amendment is necessary to clarify that the sponsor restrictions listed in this section only apply to basic CAPI.

Section 49-020.32

Specific Purpose:

This section is being amended to specify that to be eligible for ‘extended’ CAPI a non-citizen who entered the United States on or after August 22, 1996 must be ineligible for basic CAPI under any of the conditions described in MPP Sections 49-020.31 through .313. It also specifies that extended CAPI is effective October 1, 1999.

Factual Basis:

This amendment is necessary to be consistent with Welfare and Institutions Code Section 18938(a)(3).

Section 49-035.723

Specific Purpose/Factual Basis:

This section is amended to add a hyphen in the word ‘non-citizen’ for consistency.

Sections 49-035.723(b) through (b)(2)

Specific Purpose:

These sections are being amended to specify that the length of the deeming period depends on the type of Affidavit signed, and, for persons entering the United States on or after August 22, 1996, whether the person is eligible for basic or extended CAPI. Section 49-035.723 is amended to hyphenate the word “non-citizen” for consistency. Minor amendments are also made for clarity.

Factual Basis:

These amendments are necessary to comply with the deeming rules used in the SSI/SSP program as described in 20 CFR 416.1166a, 8 USC 1631, and Welfare and Institutions Code Section 18940(b).

Section 49-035.723(c)

Specific Purpose:

This section is being adopted to refer to Section 49-037 for detailed instructions on when sponsor deeming applies, length of sponsor-deeming periods, and exceptions to sponsor deeming.

Factual Basis:

Section 49-037 is being adopted for ease of reference and clarity since the same sponsor-deeming rules apply to the deeming of both the sponsor's income and the sponsor's resources. Referrals to this section are made for determining what deeming rules apply for the deeming of both income and resources, instead of repeating the complex set of rules in both the income and resource sections.

Sections 49-035.723(c)(1) through (d)(3)

Specific Purpose/Factual Basis:

See Factual Basis for Section 49-035.723(c).

Section 49-037

Specific Purpose/Factual Basis:

This section is being adopted for ease of reference and clarity since the same sponsor-deeming rules apply to the deeming of both the sponsor's income and resources.

Section 49-037.1

Specific Purpose:

This section is being adopted to clarify that sponsor deeming encompasses a set of regulations including counting income and resources of the sponsor as belonging to the non-citizen, verifying sponsor's information, establishing the correct deeming period, interaction with other deeming rules, and applying appropriate exceptions and exclusions in determining CAPI eligibility. It also specifies that sponsor-deeming rules apply regardless of whether or not the sponsor actually provides the non-citizen with any support.

Factual Basis:

This section is necessary to describe the types of sponsor-deeming rules in the rest of this section that are reflective of the SSI rules and regulations found in 20 CFR 416.1160, 416.1166a and 416.1204; Social Security Administration's Program Operations Manual System (POMS) SI 00502.240, SI 00502.280, SI 01320.910, SI 01320.915 and SI 01320.920; and Welfare and Institutions Code Section 18940.

Sections 49-037.2 through .213

Specific Purpose:

These sections are being adopted to specify the rules for a non-citizen whose sponsor signed the New Affidavit of Support.

Section 49-037.21 specifies that the deeming from a sponsor who signs the New Affidavit of Support applies – for non-citizens eligible for basic CAPI – unless or until the sponsor dies, the non-citizen becomes a naturalized citizen, or the non-citizen is credited with 40 quarters of coverage as defined under Title II of the Social Security Act.

Sections 49-037.211 through .213 are renumbered from Section 49-035 for clarity and ease of use.

Factual Basis:

These sections are necessary to reflect that the deeming period for the New Affidavit under federal law as previously reflected in MPP Section 49-035.723(c) only applies to those non-citizens who are eligible for basic CAPI [under Welfare and Institutions Code Sections 18938(a)(1) and (2)]. Welfare and Institutions Code Section 18940(b) requires federal deeming rules apply to all persons who are not eligible for extended CAPI.

Section 49-037.22

Specific Purpose:

This section is being adopted to specify that for non-citizens who are ineligible for basic CAPI and whose sponsor signed the New Affidavit, sponsor deeming applies for a period of 10 years from the date of the sponsor’s execution of the Affidavit or date of the non-citizen’s arrival in the United States, whichever is later.

Factual Basis:

This amendment is necessary to comply with Welfare and Institutions Code Section 18940(b), which requires a 10-year sponsor-deeming period for extended CAPI.

Section 49-037.23 et seq.

Specific Purpose:

This section is being adopted to list the exceptions to sponsor deeming that apply to both basic and extended CAPI when the sponsor has signed a New Affidavit. They include the existing federal abuse exception when the victim is living in a different household than the abuser and adds the indigence exception as well as the state abuse exception that applies when the non-citizen is a victim of abuse by either the sponsor or the sponsor’s spouse.

Factual Basis:

Section 49-037.23 is necessary to comply with the federal and State rules for excluding a sponsor’s income and resources when the sponsor has signed a New Affidavit.

Section 49-037.231 is simply a new placement and renumbering for current regulation MPP Section 49-035.723(c)(4). This section is based on federal law (8 USC 1631).

Section 49-037.232 is necessary to comply with the abuse exception under State law at Welfare and Institutions Code Section 18940(c).

Section 49-037.233 is necessary to comply with the indigence exception rules as outlined in 8 USC 1631(e) and POMS SI 00502.280.

#### Section 49-037.24

##### Specific Purpose:

This section is being adopted to specify that for both basic and extended CAPI, when the sponsor who has signed the New Affidavit is also the ineligible spouse or parent [as defined in MPP Section 49-005(i)], sponsor-deeming rules apply in lieu of deeming from an ineligible spouse or parent.

##### Factual Basis:

This adoption is necessary to comply with the federal regulations listed in POMS SI 00502.240.

#### Sections 49-037.3 through .312

##### Specific Purpose:

These sections are being adopted to specify the rules for a non-citizen whose sponsor signed the Old Affidavit of Support.

Section 49-037.31 specifies that the deeming from a sponsor who signs the Old Affidavit of Support applies for non-citizens eligible for basic CAPI unless or until the sponsor dies, or three years have elapsed since the non-citizen's date of admission for permanent residence as established by the Immigration and Naturalization Service.

##### Factual Basis:

These sections are necessary to reflect that the deeming period for the Old Affidavit under federal law as previously reflected in MPP Section 49-035.723(d) only applies to those non-citizens who are eligible for basic CAPI [under Welfare and Institutions Code Sections 18938(a)(1) and (a)(2)]. Welfare and Institutions Code Section 18940(b) requires that federal deeming rules apply to all who are not eligible for extended CAPI.

Section 49-037.32

Specific Purpose:

This section is being adopted to specify that for non-citizens who are ineligible for basic CAPI and whose sponsor signed the Old Affidavit, sponsor deeming applies for a period of 10 years from the date of the sponsor's execution of the Affidavit or date of the non-citizen's arrival in the United States, whichever is later.

Factual Basis:

This adoption is necessary to comply with the provisions of Welfare and Institutions Code Section 18940(b), which requires a 10-year sponsor-deeming period for extended CAPI.

Section 49-037.33 et seq.

Specific Purpose:

This section is being adopted to list the exceptions to sponsor deeming that apply to both basic and extended CAPI when the sponsor has signed an Old Affidavit. They include the existing federal exception when the non-citizen becomes blind or disabled after admission to the United States, adds the exception for non-citizens who are not Lawfully Admitted for Permanent Residence to the United States, and the state abuse exception that applies when the non-citizen is a victim of abuse by either the sponsor or the sponsor's spouse.

Factual Basis:

These adoptions are necessary to comply with the federal and state rules for excluding a sponsor's income when the sponsor has signed an Old Affidavit.

Section 49-037.331 is simply a new placement and renumbering for current MPP Section 49-035.723(d)(3). It is based on federal regulations [20 CFR 416.1166a(d)(3)].

Section 49-037.332 is necessary to comply with the Supplemental Security Income regulations described in POMS SI 01320.910C.1.

Section 49-037.333 is necessary to comply with the abuse exception under state law [Welfare and Institutions Code Section 18940(c)].

Section 49-037.34

Specific Purpose:

This section is being adopted to specify that for both basic and extended CAPI, when the sponsor who has signed the Old Affidavit is also the ineligible spouse or parent [as defined in MPP Section 49-005(i)], deeming from an ineligible spouse or parent applies in lieu of deeming from a sponsor.

Factual Basis:

This adoption is necessary to specify the different rules that exist in multiple deeming situations depending on which Affidavit the sponsor signed. This amendment is necessary to be consistent with POMS SI 01320.910C.3.

Section 49-037.4

Specific Purpose:

This section is being adopted to establish a heading (and a reference used previously in Section 49-037.233 of these amendments) for the complex set of indigence exception regulations that follow, and to specify that the indigence exception only applies to non-citizens whose sponsor signed the New Affidavit.

Factual Basis:

This adoption is necessary to comply with federal law and regulations in 8 USC 1631(e), and POMS SI 00502.280, respectively. These laws and regulations mandate the indigence exception for purposes of SSI/SSP eligibility. Welfare and Institutions Code Section 18940 requires that federal and state laws and regulations governing SSI/SSP must also govern CAPI.

Section 49-037.41 et seq.

Specific Purpose:

This section is being adopted to specify that the indigence exception applies when all of the following criteria are met:

- a. sponsor-deeming results in denial, suspension, or reduction of CAPI benefits,
- b. the non-citizen is unable to obtain both food and shelter,
- c. the non-citizen completes and signs form SOC 809, and
- d. the county determines that the indigence exception applies.

Factual Basis:

This adoption is necessary to comply with the SSI/SSP regulations in POMS SI 00502.280. Completion of the specified form is needed to ensure that the county obtains the specific information regarding the immigrant's income and living arrangements and that the applicant or recipient is aware that the sponsor's lack of support will be reported to the Immigration and Naturalization Service.

Section 49-037.42 et seq.

Specific Purpose:

This section is being adopted to specify that the indigence exception does not apply when the non-citizen lives with his or her sponsor, or receives free room and board while living with someone else.

Factual Basis:

This adoption is necessary to comply with SSI/SSP regulations in POMS SI 00502.280B.

Section 49-037.43 et seq.

Specific Purpose:

This section is being adopted to specify that the county must determine that the non-citizen who is not living with his or her sponsor and not receiving free room and board in another's household is unable to obtain food and shelter if:

- a. the total gross income that the non-citizen receives from all sources is less than the federal SSI individual rate if the non-citizen is not living with his or her spouse or the SSI couple rate if the person is living with his or her spouse, and
- b. the resources available to the non-citizen are below the applicable resource limit.

Factual Basis:

This adoption is necessary to comply with SSI/SSP regulations in POMS SI 00502.280B.

Section 49-037.44 et seq.

Specific Purpose:

This section is being adopted to specify that the total gross income and available resources counted for the purpose of determining whether the non-citizen is unable to obtain food and shelter consists of:

- a. All of the non-citizen's own income and resources, including those normally excluded.

- b. The income and resources of the immigrant’s spouse (if living together), or parent(s) (if living with the minor immigrant),
- c. Any cash, food, housing, or other assistance provided by other individuals or agencies (including the sponsor).

Factual Basis:

This adoption is necessary to comply with the SSI/SSP regulations in POMS SI 00502.280 and to clarify that the income-counting rules for purposes of determining the indigence exception are different than those for CAPI eligibility in general.

Section 49-037.45 et seq.

Specific Purpose:

This section is being adopted to specify that the indigence exception applies for a period of 12 consecutive months (including nonpayment months) beginning whenever all conditions are met and ending with the last day of the 12<sup>th</sup> month unless or until a new indigence determination is made. It also clarifies that sponsor deeming does not apply during this 12-month period.

Factual Basis:

This adoption is necessary to comply with SSI/SSP regulations in POMS SI 00502.280C.2, which allows for multiple occurrences of the 12-month exception period.

Sections 49-037.46 and .461

Specific Purpose:

These sections are being adopted to specify that the county has the responsibility to obtain the completed form signed by the recipient specifically applying for the indigence exception, which also provides information regarding the non-citizen’s income and living arrangements.

Factual Basis:

This adoption is necessary to ensure that the non-citizen knows exactly what he or she is applying for, the associated reporting responsibilities, and that the sponsor’s lack of support must be reported to the Immigration and Naturalization Service. This section is needed to ensure statewide uniformity for indigence-exception determinations.

Sections 49-037.462 through .462(b)

Specific Purpose:

These sections are being adopted to establish that it is a county's responsibility to contact the sponsor to confirm the non-citizen's allegations regarding the amount of income and resources that the sponsor provides or makes available to the non-citizen. Subsections (a) and (b) are needed to specify that the county must contact the Immigration and Naturalization Service for the sponsor's address when the sponsor's whereabouts are unknown, and to accept the non-citizen's allegation (when credible) if the sponsor cannot be located.

Factual Basis:

This adoption is necessary to comply with SSI/SSP regulations in POMS SI 00502.280D.

Sections 49-037.463 through .463(b)

Specific Purpose:

These sections are being adopted to require the county to prepare a written determination of whether or not the indigence exception can be applied based on all available evidence including the amount of income and resources available to the non-citizen. The county must also determine CAPI eligibility and payment amount based on this same information. Subsection (b) is being adopted to require the county to notify the Immigration and Naturalization Service and the Department of the indigence-exception determination.

Factual Basis:

These adoptions are necessary because allowing or denying the indigence exception will often be critical in approving or denying a CAPI application, making it imperative that the file contains documentation of the determination. These sections are also necessary to comply with SSI/SSP regulations in POMS SI 00502.280D. The federal law upon which the indigence exception is based (8 USC 1631) requires any agency making an indigence determination to notify the Attorney General of such determination. This requirement has been interpreted in SSI/SSP regulations POMS SI 00502.280E to mean notification of the Immigration and Naturalization Service.

Sections 49-037.5 and .51

Specific Purpose:

These sections are being adopted to specify that the non-citizen is responsible for obtaining the cooperation in the development and documentation needed to determine the sponsor's income and resources, the information needed to make an indigence exception determination, or any other information needed to apply the sponsor-deeming rules.

Factual Basis:

These adoptions are necessary to comply with federal procedures outlined in SSI regulations POMS SI 01320.920. Information regarding the sponsor and his or her income and resources is often critical for the county to correctly determine the non-citizen's eligibility and payment amount, as required by MPP Section 49-015.23. This adoption is also necessary to clarify existing regulations at MPP Section 49-015.13 that require applicants to provide all documentation and information requested by the county.

Sections 49-037.511 and .512

Specific Purpose:

These sections are being adopted to specify that if a sponsor cannot be located, it is the non-citizen's responsibility to obtain evidence of the sponsor's income and resources; and that if the non-citizen does not provide requested verification of the sponsor's income and resources, the application must be denied or benefits must be suspended.

Factual Basis:

These adoptions are necessary in order to be consistent with SSI/SSP regulations in POMS SI 0132.920B.1. This adoption is also necessary to clarify existing regulations at MPP Section 49-015.13 that require applicants to provide all documentation and information requested by the county.

Section 49-037.52

Specific Purpose:

This section is being adopted to specify that the county must verify alleged lack of sponsorship with the Immigration and Naturalization Service whenever a non-citizen who is Lawfully Admitted for Permanent Residence alleges not having a sponsor.

Factual Basis:

This adoption is necessary to comply with SSI/SSP regulations in POMS SI 01320.915E and to clarify when it is necessary for the county to contact INS.

Section 49-037.53

Specific Purpose:

This section is being adopted to specify that the county must obtain a signed statement from the sponsor regarding the income and resources of the sponsor(s), unless the non-citizen's statement would make him or her ineligible for CAPI. Information regarding the sponsor and his or her income and resources is often critical for the county to correctly determine the non-citizen's eligibility and payment amount, as required by MPP Section 49-015.23.

Factual Basis:

This adoption is necessary to comply with SSI/SSP regulations in POMS SI 01320.920, which require the sponsor's signed statement for the purposes of determining SSI/SSP eligibility.

Sections 49-037.54 through .542

Specific Purpose:

These sections are being adopted to specify that the county must obtain a copy of the Affidavit if the sponsor's allegations regarding income and resources appear to allow eligibility for the non-citizen. It also specifies that the non-citizen is ultimately responsible for obtaining a copy of the Affidavit, and that the county must compare it with the sponsor's allegation if the allegation appears to allow eligibility.

Factual Basis:

These adoptions are necessary in order to comply with SSI/SSP regulations in POMS SI 01320.920. Information regarding the sponsor and his or her income and resources is often critical for the county to correctly determine the non-citizen's eligibility and payment amount, as required by MPP Section 49-015.23. This adoption is also necessary to clarify existing regulation at MPP Section 49-015.13 that requires applicants to provide all documentation and information requested by the county.

Section 49-040.74

Specific Purpose:

This section is being adopted to refer to a new section on sponsor deeming. Section 49-037 is being adopted for ease of reference and clarity since the same sponsor-deeming rules apply to the deeming of both the sponsor's income and resources.

Factual Basis:

This section is necessary to refer to Section 49-037 in order to describe the types of sponsor-deeming rules in the rest of this section as well as in 20 CFR 416.1160, 416.1166a, and 416.1204 that govern SSI eligibility.

Section 80-310(s)(6)

Specific Purpose:

This section is adopted to provide information on the CAPI Indigence Exception Statement (SOC 809).

The California Department of Social Services is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the SOC 809. This form is not printed in the California Code of Regulations or the CDSS Manual of Policies and Procedures, because it would be cumbersome and impractical.

Factual Basis:

This section is necessary as the form SOC 809 is to be completed by CAPI applicants or recipients who are claiming that they meet the indigence exception to sponsor-deeming.

b) Identification of Documents Upon Which Department Is Relying

Assembly Bill 429 (Chapter 111, Statutes of 2001)

8 U.S.C. Section 1631

20 CFR 416.1160, 416.1166a, and 416.1204

Social Security Administration's Program Operations Manual Sections SI 00592.240; SI 01320.910C; SI 01320.915E; and SI 01320.920.

c) Local Mandate Statement

These regulations impose a mandate upon county welfare departments to administer the program, but not upon local school districts. Welfare and Institutions Code Section 18942 requires CDSS to reimburse the counties for the cost of actual CAPI payments and for any administrative costs actually attributable to those payments.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.